Supreme Court of the United States.

October Term, 1904.

William H. Pope, Plaintiff in Error,
vs.
James M. C. Williams and James W. Hopkins, as the Board of Registry of Election District No. 7 of Montgomery County, Maryland, Defendants in Error.

In error to the Court of Appeals of the State of Maryland.

BRIEF FOR PLAINTIFF IN ERROR.

WM. H. POPE,
Plaintiff in Error, pro se.

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BRIEF FOR PLAINTIFF IN ERROR.

Statement of the Case.

The question at issue is the validity, as respects the Constitution of the United States, of a law of the State of Maryland, approved March 29, 1902, which the plaintiff in error claims abridged the right and privilege of Maryland citizenship acquired by him subsequent to the passage of the act. The statute is contained in Laws of Md., 1902, ch. 133, p. 204, and was enacted as a part of Article 33 of the Code of Public General Laws of Maryland, title, "Elections," sub-title, "Registration."

It reads as follows (italicizing mine—W. H. P.):

"SECTION 25*b*. All persons who after the passage of this act shall remove into any county of this State or into the City of Baltimore from any other State, District or Territory, shall indicate their intent to become citizens and

residents of this State by registering their names in a suitable record book, to be procured and kept for the purpose by the Clerk of the Circuit Court for the several counties, and by the Clerk of the Superior Court of Baltimore City; such record to contain their names, residence, age and occupation; *and the intent of such persons to become citizens and residents of this State shall date from the day on which such registry shall be so entered* in such record book by the Clerk of the Circuit Court for the county, or of the Superior Court of Baltimore City, as the case may be, into which county or city such person shall so remove from any other State, District or Territory. *And no person coming into this State from any other State, District or Territory shall be entitled to registration as a legal voter of this State until one year after his intent to become such legal voter shall be thus evidenced* by such entry in such record book, *and such entry or a duly certified copy thereof shall be the only competent and admissible evidence of such intent.* And the Clerk of the Superior Court of Baltimore City and of the several courts of the several counties shall immediately, upon the passage of this act, procure a suitable record book for the recording therein of such entries, arranged alphabetically under the names of such persons. For every person so registered under the provisions of this section they shall be entitled to demand and receive the sum of twenty-five cents, to be paid to said clerks by the Mayor and City Council of Baltimore and the County Commissioners respectively. A copy of such record duly certified by said clerk shall be evidence of the right of such person to registration as legal voters according to law, and each person so registered shall be entitled to such certified copy upon demand without charge."

On June 7, 1902, plaintiff in error was an adult male citizen of the United States, living in the District of Columbia. With his family he removed on said date into Montgomery County, Maryland, and has ever since resided there. The Constitution of Maryland, then and ever since in force, provided for manhood suffrage, and conferred the electoral franchise upon adult male citizens of the United States, *after a residence of one year in the State.* It also empowered the General Assembly of Mary-

land to provide for the registration of voters having the qualifications prescribed in the Constitution of the State. (See Exhibit A, Appendix, *infra*.)

On September 29, 1903, plaintiff in error attended at the place of registration in his election precinct, before the defendants in error, as officers of registration constituting the board of registry for said precinct, and asked to be registered as a duly qualified voter of the State of Maryland. His request was refused, upon the ground that he could not be regarded as a resident and citizen of Maryland, because of non-production of the evidence prescribed by the act of March 29, 1902. Thereupon, as authorized by the State laws (Exhibit B, Appendix, *infra*), this proceeding was begun in the Circuit Court of Montgomery County, Maryland, to obtain a revision of the action of the defendants in error. In the petition was alleged facts which tended to establish the possession by plaintiff in error of the qualifications for voting mentioned in the Constitution of Maryland; non-observance of the requirements of the statute; and the refusal to register and the ground of such refusal were alleged. It was also averred that, for various assigned reasons (Rec. p. 9), the law in question was void because repugnant both to the Constitution of the State and the Constitution of the United States. A general demurrer was filed to the petition, which, after argument, was sustained. On appeal, the Court of Appeals of Maryland affirmed the order of the Circuit Court. (56 Atl. 543.) To reverse the judgment of affirmance, this writ of error was taken.

SPECIFICATION OF ERRORS.

The error asserted and intended to be urged is the following: The Court of Appeals of Maryland erred in affirming the judgment of the Circuit Court of Montgomery County, and in deciding that the law in question was valid, and

a. In holding that the statute was not repugnant to fundamental and inalienable rights of citizens of the United States and to implied guarantees of the Constitution of the United States, whereby every citizen of the United States is entitled to remove at will into any State, without being subjected, because of such removal, to the performance of offensive and burdensome conditions as a prerequisite to the acquisition and enjoyment of civil rights and privileges;

b. In holding that the statute did not operate an unjust discrimination against citizens of the United States removing into Maryland after March 29, 1902, and was not repugnant to that provision of the first section of the Fourteenth Amendment which forbids a State to deny to any person within its jurisdiction the equal protection of the laws; and

c. In holding that the statute did not abridge a right and privilege derived under the Constitution of the United States, viz., the status of State citizenship, and was not repugnant to that portion of the first section of the Fourteenth Amendment, which declares that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

BRIEF OF ARGUMENT.

It is to be borne in mind, in considering this argument, that the Federal question urged is not that the plaintiff in error was deprived by the statute in question of the right to vote, but is that the Federal privilege of Maryland citizenship was denied and abridged. And at the threshold of the discussion let us cursorily examine the statute. It is an extraordinary production. Supposedly framed and enacted under a constitutional authority to provide by law for the registration of those possessing the voting qualifications prescribed in the Constitution of Maryland, the statute yet, in general terms, requires "every

person" who may remove into Maryland after the passage of the act to declare *at the county seat* his intention "to become" a resident and citizen of Maryland. It does not affect persons who had removed into Maryland before the passage of the act, even though not registered as voters. No attempt is made to ascertain from the new arrival whether voting qualifications are possessed by him. All he need declare—*and that not under oath*—is his name, age, residence, occupation and his intention "to become" a citizen and resident of Maryland. The act manifestly is aimed at citizens of the United States (for none other can become voters in Maryland) and at those who have actually come into Maryland to live; yet nothing need be stated as to when or how, if at all, the declarant became a citizen of the United States or the date of his coming into the State. In substance, the statute prescribes a condition to the acquisition of the status of resident or citizen of Maryland, for the intent to become such is to date *from the time of the making of the declaration.*

It is also premised that there is no dispute that, but for the statute in question, it would have been the duty of the defendants in error to have recognized that the plaintiff in error was a resident and citizen of Maryland, and to have registered him as a duly qualified voter. (See first four paragraphs of the opinion of the State court—Rec. pp. 13 and 14, embodied in a single paragraph in the report in 56 Atl. 543.)

The error assigned as committed by the State court, may be resolved into three propositions, which I shall consider in their order. They are:

First. A privilege under the Constitution of the United States, if vested in plaintiff in error, being specially set up in the State court as invaded by the statute in question, and the statute being held to be valid, this court has jurisdiction, although the ultimate relief sought below was a privilege under the Constitution of the State.

Second. State citizenship is a privilege under the Con-

stitution of the United States and a privilege and immunity of a citizen of the United States, which cannot be abridged by a State.

Third. The statute in question oppressively burdened and abridged the privilege of Maryland citizenship which attached to the plaintiff in error on June 7, 1902, and was consequently invalid.

First Proposition.

A privilege under the Constitution of the United States, if vested in plaintiff in error, being specially set up in the State court as invaded by the statute in question, and the statute being held to be valid, this court has jurisdiction, although the ultimate relief sought below was a privilege under the Constitution and laws of the State.

I need only cite in support of this proposition *Boyd* v. *Thayer*, (143 U. S. 135.)

Second Proposition.

State citizenship is a privilege under the Constitution of the United States and a privilege and immunity of a citizen of the United States, which cannot be abridged by a State.

That the status of resident and citizen of a State is a privilege of a citizen of the United States, dependent upon the Constitution of the United States, was expressly declared in the Slaughter-House Cases, (16 Wall. 36,) the first case in which this court considered and construed the Fourteenth Amendment. The court, speaking through Mr. Justice Miller, said (pp. 72, 73, 79 and 80):

"The first section of the fourteenth article, to which our attention is more specially invited, opens with a definition of citizenship—not only citizenship of the United States, but citizenship of the States. No such definition was previously found in the Constitution, nor had any attempt been made to define it by act of Congress. * * *

"To establish a clear and comprehensive definition of citizenship which should declare what should constitute

citizenship of the United States, and also citizenship of a State, the first clause of the first section was framed.

"'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.' * * *

"We venture to suggest some (of the privileges and immunities of citizens of the United States which no State can abridge) which owe their existence to the Federal Government, its national character, its Constitution, or its laws. * * *

"One of these is well described in the case of *Crandall* v. *Nevada*, (6 Wallace, 36.) It is said to be the right of the citizen of this great country, protected by implied guarantees of its Constitution, 'to come to the seat of government to assert any claim he may have upon that government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions. He has the right of free access to its seaports, through which all operations of foreign commerce are conducted, to the sub-treasuries, land offices, and courts of justice in the several States.' And quoting from the language of Chief Justice Taney in another case, it is said 'that *for all the great purposes for which the Federal Government* was established, we are one people, with one common country, *we are all citizens of the United States*;' and it is, as such citizens, that their rights are supported in this court in *Crandall* v. *Nevada*.

* * * "One of these privileges is conferred by the very article under consideration. It is that a citizen of the United States can, of his own volition, become a citizen of any State of the Union by a *bona fide* residence therein, with the same rights as other citizens of that State."

In *Boyd* v. *Thayer*, *supra*, after noticing the decision in the Slaughter-House Cases, it was said by Chief Justice Fuller, speaking for the court, that the Fourteenth Amendment embodied the view expressed by Chief Justice Marshall in *Gassies* v. *Ballou*, (6 Pet. 761, 762,) that "A citizen of the United States residing in any State of the Union, is a citizen of that State." And in *Morris* v. *Gilmer*, (129 U. S. 315,) in considering the question of the domicil of

Gilmer for the purpose of determining his right to sue in a court of the United States, it was said (italicizing mine —W. H. P., p. 328):

"It is true, as contended by the defendant, that a citizen of the United States can *instantly* transfer his citizenship from one State to another (*Cooper* v. *Galbraith*, 3 Wash. C. C. 546, 554.) * * *"

That a Federal privilege of the character now being considered cannot be abridged by a State is expressly declared in the same section of the Fourteenth Amendment which defines citizenship of the United States and of a State, in the command that a State shall not "make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." It would manifestly be against public policy to permit a State, by indirection, to annul a privilege derived under the Constitution of the United States and require an acceptance of a similar privilege under a State law, with the waiver of benefits theretofore attached to a status resulting from the attaching of the privilege. The case is within the principle of the decision in *Barron* v. *Burnside*, (121 U. S. 186, and cases cited.) Approved in *Southern Pacific Co.* v. *Denton*, (121 U. S. 186;) *Barrow Steamship Company* v. *Kane*, (170 U. S. 111;) and *Blake* v. *McClung*, (172 U. S. 256.) And see *Dayton Coal & Iron Co.* v. *Barton*, (183 U. S. 23, 25;) *Cable* v. *United States Life Insurance Co.*, (191 U. S. pp. 306–307.) Further, the provision of the Fourteenth Amendment conferring the privilege of State citizenship upon citizens of the United States contains no definition of the term residence, nor does it prescribe the mode of proving such residence. What constituted residence was at that time determined by the principles of the common law and the application of the general rules of evidence, and, I submit, the presumption must be indulged that it was intended that when the fact of residence, in the sense of the Fourteenth Amendment, was at

issue in a court of justice, there should be no substantial variation from the mode of determining the fact as to residence which was in force when the Amendment was adopted. (*United States* v. *Wong Kim Ark*, 169 U. S. 654; *United States* v. *Palmer*, 3 Wheat. 630; *United States* v. *King*, 34 Fed. Rep. 306.)

Third Proposition.

The statute in question oppressively burdened and abridged the privilege of Maryland citizenship which attached to the plaintiff in error on June 7, 1902, and was consequently invalid.

The primary power and control of the State of Maryland over the electoral franchise in that State is not questioned. But, like all the powers of a State, it must be exercised in subordination to the Constitution of the United States; it must be exerted in a reasonable manner, so as not to abridge or nullify provisions of the Constitution of the United States, as is done when rights or privileges dependent upon that instrument are abridged or destroyed. For instance, it will not be asserted, I think, that the General Assembly of Maryland could lawfully enact a statute directly requiring male adult citizens of the United States removing into Maryland from another State after a particular date, who desire to become citizens of the State, to be naturalized in a court of the State, and prohibiting the judicial tribunals of the State and the executive officers from recognizing State citizenship, for any purpose, as attaching to that class unless acquired in the statutory mode. Yet this, I insist, is precisely what has been done, by indirection, in the statute here assailed. Suppose the following had been engrafted as a proviso on Section 1 of Article I of the Constitution of Maryland: "But no male citizen of the United States, of the age of twenty-one years or upwards, who may remove into Maryland after the date of the going into effect of this Constitution, shall be deemed a resident

of Maryland until he has registered before the clerk of the county in which he may reside a declaration of his intention to become a resident of Maryland." Would any doubt be entertained that this substantially required the NATURALIZATION of such a person and prescribed it as a qualification for the acquisition of the elective franchise? Certainly not. And this, I contend, is the precise import and effect of the act of March 29, 1902.

The right of the plaintiff in error, under the Constitution of the United States, to remove into Maryland and become *at will* a citizen of that State certainly could not be controlled, in advance, by the State of Maryland, by a requirement as to evidence of intention. (*Crandall* v. *Nevada*, 6 Wallace, 36; *Henderson* v. *Mayor*, 92 U. S. 268; and *Vance* v. *W. A. Vandercook Co.*, No. 1, 170 U. S. 438, 455, deciding that a right to engage in interstate commerce could not be fettered in advance by a State.) Does it not necessarily follow that as the right of residence and consequent citizenship was a continuing one, so long as the conditions existed which under the Constitution of the United States annexed the right and privilege to the person of the plaintiff in error, the State of Maryland was without power to arbitrarily and oppressively burden and in effect take away the acquired right? This, however, is the result accomplished by the statute in question, for no recognition of citizenship is accorded one who does not comply with its terms, and if a declaration of intention is made, the intention is made to date from that time, when also the constitutional year of residence is made to commence.

Before making a critical examination of the statute to exhibit its oppressive character, I premise that, for convenience, I may not every time I employ the appellation "citizen" couple it with "resident." They possess the same meaning in the Fourteenth Amendment. (*Anderson* v. *Watt*, 138 U. S. 702.) And see *Sully* v. *American*

National Bank, (178 U. S. 298.) The Constitution of Maryland was adopted in convention after submission to the States of the proposed Fourteenth Amendment, and the provisions of section 1 of article 1 of that Constitution, establishing the qualifications of voters, obviously were intended to harmonize with the amendment. Certain it is when that section is read in connection with article 7 of the Declaration of Rights of Maryland, the fact that "resident" was used as synonymous with "citizen" is made clear beyond dispute. The provision in the declaration reads as follows:

"ART. 7. That the right of the people to participate in the Legislature is the best security of liberty and the foundation of all free government; for this purpose elections ought to be free and frequent; and every male citizen, having the qualifications prescribed by the Constitution, ought to have the right of suffrage."

Coming then to the statute, and assuming that the declaration of intention was made to relate back to the time when the declarant actually became a citizen of Maryland, are its provisions oppressively burdensome and calculated to deter citizens of the United States from availing of the right of State citizenship conferred by the Constitution of the United States? This question is answered by the criticism of the statute made in the brief filed below, and it is here reproduced. It was said:

"That the statute operates an unjust discrimination against citizens of the United States who remove into Maryland after March 29, 1902, is equally plain. Citizens of the United States who removed into Maryland prior to March 29, 1902, and native-born citizens, residents of Maryland, may obtain registration as qualified voters without any prior declaration of intent. The statute, in the duty it imposes upon those citizens of the United States who come into Maryland after March 29, 1902, is onerous and oppressive. It takes no account of the pecuniary circumstances, age, and state of health of the removant, his

business and family cares and responsibilities, the time and attention that may be necessary to get settled in the new home, the contingency of sickness of the removing party or of a member of his household, the remoteness of his residence from the county seat, and the expense and loss of time which might be occasioned by a compliance with the law. ALL MEN, young or old, the aged and infirm, the invalid as well as the robust young man, the very poor as well as the man possessed of a competency; ALL MEN, I repeat, whatever the danger to life or health and the pecuniary sacrifice entailed, MUST visit the county seat—to do what? Merely make a statement to the clerk of the county, not even made impressive by the sanctity of an oath, that on the day he makes the declaration, though his residence is then in Maryland and his status is that of a citizen of Maryland, he intends TO BECOME a citizen and resident of Maryland; and all this, despite the fact that other citizens of Maryland need only declare what their past and continued intention has been and is, when being examined by the officers of registration, and despite also the principle stated in *Southerland* v. *Norris*, (74 Md. 331,) and cases cited, that the place where a person lives is presumptively his domicil or legal residence. It matters not also if, on appearing before the clerk, the would-be declarant, on comprehending the full import of the declaration, has conscientious scruples against even impliedly declaring that he is not yet a citizen and resident of Maryland, for this he does when he asserts that he intends TO BECOME a citizen and resident, and observes that his constitutional year of residence is by the statute made to date from the day the declaration is made. He is not permitted to qualify his declaration, and if unwilling to repudiate his status and waive his acquired rights as to length of residence already earned by reason of such status, he must return to his home and continue a disfranchised citizen. Is it because the Legislature had doubts whether many might not refuse to make such a declaration that it did not require it to be upon oath? Further, he must do something also not required of other citizen voters in Maryland. He must procure, preserve, and produce to the registration officers a certified copy of the record made of the declaration of intention."

How did the State court meet this arraignment of the statute? By asserting that the statute was an effort to supply a "safer" rule of evidence than that ordinarily employed for solving the question of the intention of a person removing into a State to change his legal domicil, and that the requirement of a declaration of intention was not unreasonable, or a burdensome or offensive condition, because "no fee is chargeable against them for so doing, and none for obtaining a certified copy thereof." Not a word respecting the criticism actually made of the act!!!

The statement of the Court of Appeals of Maryland regarding the purpose of the General Assembly in enacting the statute is, I submit, wild *conjecture*, in nowise justified by the language of the statute. In this court (*Shelton* v. *Tiffin*, 6 How. 163,) it has been recognized that "intention" as to domicil "may be shown *more satisfactorily* by acts than declarations." And when it is borne in mind that in Maryland applicants for registration as qualified voters are interrogated by the officers of registration under oath (Sec. 16, Art. 33, Code of Public General Laws,) and that an attempt to register illegally is punishable by imprisonment "in jail or in the penitentiary for not less than six months nor more than five years," (Sec. 82, Ib.,) it is repugnant to common sense to impute to the members of the General Assembly of Maryland the purpose when enacting this statute to provide a "safer" rule of evidence than that then prevailing, by the requirement—unrestrained by statutory penalties for a false statement—of an intention "TO BECOME" a resident and citizen of Maryland. Rather, it would seem that the object sought to be obtained was to deter persons within the purview of the statute from attempting to establish their State citizenship and consequent right to acquire and exercise the elective franchise in Maryland. If the act was designed as a *bona fide* registration law, why was not provision made for ascertaining when persons affected by the act

actually removed into Maryland, and when the intention was formed to make Maryland the place of fixed abode, and why was not the right under the State Constitution to be registered after an actual residence of one year respected, and why were not similar requirements imposed upon other classes of citizens than those who removed into Maryland after March 29, 1902? Were it allowable to refer to the statements of those having knowledge on the subject as to the origin and purpose of this statute, I should quote from an address delivered by Senator Gorman, of Maryland, at Highland, Howard County, Maryland, on October 24, 1903, as reported in the Baltimore American of October 25, 1903, page 3. But this, I understand, is not permitted.

It is a fundamental principle of law, however, that the legitimacy of the exercise of any legislative authority concerning the constitutional rights of the citizen, whatever the language employed in the statute, is to be tested and determined by its "natural and reasonable effect" upon that right. It is a maxim alike of the law and common sense that no power can be exercised indirectly which cannot lawfully be exercised directly. (*Reid* v. *Colorado*, 187 U. S. 137, 150; *Blake* v. *McClung*, 172 Ib. 239, 176 Ib. 59; *Counselman* v. *Hitchcock*, 142 Ib. 547, 585; *Minnesota* v. *Barber*, 136 Ib. 313, 320; *Henderson* v. *New York*, 92 Ib. 259, 268.)

Testing the statute by this principle, it is plainly, I contend, an act which unreasonably burdens and fetters the Federal privilege of State citizenship and is calculated to deter citizens of the United States who remove into Maryland after March 29, 1902, from attempting to avail of such privilege.

The deterrent effect upon the exercise of even a constitutional right resulting from the placing obstacles in the way of its enjoyment was long ago recognized. Alexander Hamilton, in the 61st number of The Federalist, considering the clause of the proposed Constitution respecting

the time, place and manner of holding elections for Senators and Representatives, and noticing the objection that there should be a declaration that all elections should be held in the counties were the electors resided, said (p. 281):

"The Constitution of New York makes no other provision for *locality* of elections, than that the members of the Assembly shall be elected in the *counties;* those of the Senate, in the great districts into which the State is or may be divided; these at present are four in number, and comprehend each from two to six counties. It may readily be perceived that it would not be more difficult for the Legislature of New York to defeat the suffrages of the citizens of New York, by confining elections to particular places, than for the Legislature of the United States to defeat the suffrages of the citizens of the Union, by the like expedient. Suppose, for instance, the city of Albany was to be appointed the sole place of election for the county and district of which it is a part, would not the inhabitants of that city speedily become the only electors of the members of both of the Senate and Assembly for that county and district? Can we imagine that the electors who reside in the remote subdivisions of the counties of Albany, Saratoga, Cambridge, &c., or in any part of the county of Montgomery, would take the trouble to come to the city of Albany, to give their votes for members of the Assembly or Senate, sooner than they would repair to the city of New York, to participate in the choice of the members of the Federal House of Representatives? The alarming indifference discoverable in the exercise of so invaluable a privilege under the existing laws, which afford every facility to it, furnish a ready answer to this question. And, abstracted from any experience on the subject, we can be at no loss to determine that when the place of election is at an *inconvenient distance* from the elector the effect upon his conduct will be the same, whether that distance be twenty miles, or twenty thousand miles."

Now, by the statute complained of citizens of the United States, residing in Maryland, although citizens of Maryland by virtue of the Constitution of the United States, if

they have removed into Maryland since March 29, 1902, must visit the county seat, whatever the inconvenience and pecuniary loss to result, in order that their status as a citizen of the State may attach. The plaintiff in error lives twelve miles from the county seat of the county of his residence, and, by the circuitous mode necessary to be taken, a trip to Rockville and back means the loss of half a day's time, railroad fare, &c. In some places on the Eastern Shore, however, river transportation is for many the only available mode of reaching the county seat, and a visit to such place necessitates being at the steamboat wharf around midnight, loss of several days' time, and considerable money outlay. Needless to say, there are many persons affected by this statute who will not yield compliance to its requirements.

The Court of Appeals of Maryland, in the case which it relied upon as authority for the correctness of the ruling that the statute in question was valid, (*Southerland* v. *Norris*, 74 Md. 326,) expressly decided that voting qualifications in Maryland are solely prescribed in the Constitution of the State, but that requirements of the nature of these we have been considering are not conditions having the force of qualifications, but constitute mere rules of proof. In the brief below that case was thus referred to:

"In *Southerland* v. *Norris*, (74 Md. 326, 331,) the act of 1890, ch. 573—respecting proof of intention not to abandon a legal residence in Maryland on going into another State to live—was held valid, on the theory that the section merely substituted, for the prior rule by which residence was proven, a new and appropriate rule of evidence. Holding that the presumption from the fact of a citizen of Maryland going to live in another State was that the new State had been adopted as the permanent domicil of the party, which presumption operated against the claim that the legal residence continued in Maryland, it was decided that the removing party, if he still asserted a legal residence in Maryland, might be compelled to rebut the presumption referred to within a limited time after

the passage of the act if he had left the State prior to the passage of the act, but such declaration was to be as to his intention *when he departed from Maryland*, or to make a like affidavit prior to a departure from this State after the passage of the act. The failure to make the affidavit was held to change the previous rule of evidence by ascribing greater probative force to the act of removal and the living in another State. (Ib. 331.) The case at bar is the converse of the Southerland case. Here the removal was from another State INTO Maryland, and presumptively, according to the principles declared in the opinion in the Southerland case, the removing partly acquired a legal residence in MARYLAND. The declaration of intention required of Mr. POPE, however, if made, would not have rebutted the presumption arising from the act of coming to live in Maryland, as would the affidavit under consideration in the Southerland case; it but strengthened the presumption that Maryland was the legal domicil of Mr. Pope. Yet, while in the Southerland case, because of the failure to make affidavit as to intention, GREATER probative force was given to the presumption of the legal residence being *at the place where the party lived;* here the failure to make an unsworn declaration which, if made, could only have operated to *strengthen a presumption* that arose from the mere fact of removal into and living in this State, in favor of the removing party, is given the effect of prohibiting the introduction of any evidence in favor of the claim that Maryland was the place of his permanent domicil. Thus the Legislature catches claimants to citizenship in Maryland, going or coming. I submit that the Legislature cannot blow hot and cold in this fashion. There must be something radically wrong in a doctrine which will operate such results."

In the brief below, also, at much length was discussed the correctness of the ruling in *Southerland* v. *Norris*, that the General Assembly of Maryland was vested with an unlimited power to enact and alter rules of evidence on any subject. The authorities cited were *Ogden* v. *Saunders*, 12 Wheat. 349 (statutes of limitation); *Webb* v. *Den*, 17 How. 576 (statute presuming lawfulness of deed after registry of twenty years); *Fales* v. *Wadsworth*, 23 Maine, 553 (statute making protest of an inland note evidence

of the facts therein stated); *Gibbs* v. *Gale*, 7 Md. 76 (statute permitting introduction of parol evidence to explain a written contract); *Rich* v. *Flanders*, 39 N. H. 304, 317 (statute removing disqualification of interest in witnesses); and *Southwick* v. *Southwick*, 49 N. Y. 510 (statute making husband and wife witnesses for or against each other). It is submitted that the authorities relied upon by the State court, in support of the stated doctrine, especially when considered in connection with the particular facts of each case, do not do more than decide that rules of proof *which do not impair substantial rights*, may be established or altered at the will of a legislative body. Such is undeniably the doctrine of this court. (*Marx* v. *Hanthorn*, 148 U. S. 172; *Turner* v. *New York*, 168 U. S. 90, 94, and cases cited.) Nor do the cases cited below lend any support whatever to the doctrine that probative force may be given to a particular fact which that fact does not in any wise tend to prove, such as that a compulsory statutory declaration of an intention "to become" a resident and citizen of a State conclusively establishes that the declarant had not theretofore been such resident and citizen. That the so-called rule of evidence here considered does impair substantial rights has been demonstrated. It absolutely annihilates the period of residence earned under the operation of the Constitution of the United States prior to the making of a declaration of intention, and refuses all recognition to the existence of a legal residence within the State if the statute is not obeyed. By requirements of conditions to be performed by a would-be voter who asserts his State citizenship and desires the enjoyment of the privileges attaching to that status, and making their performance essential before there can be a recognition of State citizenship, obstacles are imposed calculated to deter many from asserting such citizenship. No discrimination is exerted against any other class of citizens, except those residents of Maryland who leave the State to temporarily abide elsewhere, who cannot absent them-

selves from the State without risk of forfeiting their legal residence in Maryland, unless they make a certain affidavit at the county seat and return to Maryland six months before an election. (See the law of 1890 considered in *Southerland* v. *Norris*, *supra*, repealed in 1896, and re-enacted in 1901. Laws of 1901, ch. 2, p. 10.) It appears to be the complement of the statute under consideration, as, under the operation of both statutes, poor and ignorant citizens of Maryland may readily lose the voting privilege.

It is not believed to be necessary to review the decisions of this court, cited in the opinion of the Court of Appeals of Maryland, as maintaining the power of the State to regulate the right of suffrage, nor compare those decisions with later decisions. It may be said of them, however, that they were written at a time when the Fourteenth Amendment was regarded as having a very restricted operation, a view long since discarded. (*Cotting* v. *Godard*, 183 U. S. 105, and cases cited.) The reasoning of these opinions, therefore, must be weighed with this fact in mind. The cases relied upon by the State court, however, do not contravene the proposition here advanced, that the power must be exercised like every other power of the State, in complete subordination to the Constitution of the United States and so as not to invade rights conferred and protected by that instrument. If the statute under consideration is a lawful exercise of a power to enact rules of evidence, then all rights—property as well as political—are at the mercy of a legislative body. The Constitution of the United States makes residence within a State one of the qualifications of a Senator or Representative of the United States. Why may not the State require some ridiculous character of proof of such residence to be made at a county seat, or even at the capital of the State, as a condition precedent to a nomination to such an office? So, the General Assembly may make the being a registered voter a qualification for holding a State or municipal office. (*Mayor &c. of Baltimore* v. *Lyman*, 92

Md. 591.) And numerous other possible instances of the exercise of such an arbitrary power can readily be supposed, such as confining the right of hunting and fishing within the State to registered voters, attaching the disabilities of alienage until a statutory declaration is made of citizenship of the United States and of the State, &c.

Conclusion.

In conclusion, it is respectfully submitted that it has been demonstrated that the statute in question was not a *bona fide* or reasonable exercise of the power to enact laws for the regulation of persons having the qualification of voters in Maryland, and that the statute unreasonably burdened, impeded and abridged a privilege derived under the Constitution of the United States. (*Henderson* v. *Mayor*, *supra*; *Crandall* v. *Nevada*, *supra*.) The statute should, therefore, be adjudged to be void and of no effect.

The judgment of the Court of Appeals of Maryland should be reversed, with costs to the plaintiff in error, and the cause should be remanded to that court with instructions to set aside aside the order of the Circuit Court of Montgomery County, Maryland, with costs to the plaintiff in error, and to direct the Circuit Court, in conformity to law, to order the name of the plaintiff in error to be placed on the registry books of Election District No. 7 of Montgomery County, Maryland, as a duly qualified voter of the State of Maryland, with costs to the plaintiff in error.

WM. H. POPE,
Plaintiff in Error, pro se.

APPENDIX.

Exhibit A.

Extracts from the present Constitution of Maryland, ratified by the People on September 18, 1867:

"ARTICLE I.

Elective Franchise.

SEC. 1. All elections shall be by ballot; and every male citizen of the United States, of the age of twenty-one years, or upwards, who has been a resident of the State for one year, and of the legislative district of Baltimore City, or of the county in which he offers to vote, for six months next preceding the election, shall be entitled to vote, in the ward or election district in which he resides, at all elections hereafter to be held in this State; * * *"

(By sections 2 and 3 adults who have been convicted of larceny or other infamous crime and not pardoned; persons of unsound mind; and all persons convicted of being concerned in bribing of voters, illegal voting, &c., are disqualified from voting.

By section 4 it is made the duty of the General Assembly to pass laws to punish with fine and imprisonment, among other offenders, any person who "shall vote in any county in which he does not reside.")

"SEC. 5. The General Assembly shall provide by law for a uniform Registration of the names of all the voters in this State who possess the qualifications prescribed in this Article, which Registration shall be conclusive evidence to the Judges of election of the right of every person thus registered to vote at any election thereafter held in this State; but no person shall vote at any election, Federal or State, hereafter to be held in this State, or at any municipal election in the City of Baltimore, unless his name appears in the list of registered voters; and until the General Assembly shall hereafter pass an Act for the Registration of the names of voters, the Law in force on

the first day of June, in the year eighteen hundred and sixty-seven, in reference thereto, shall be continued in force, except so far as it may be consistent with the provisions of this Constitution; and the registry of voters, made in pursuance thereof, may be corrected, as provided in said Law; but the names of all persons shall be added to the list of qualified voters by the officers of Registration, who have the qualifications prescribed in the first section of this Article, and who are not disqualified under the provisions of the second and third sections thereof."

Exhibit B.

Portion of Section 23 of Article 33 of Code of Public General Laws of Maryland, title "Election," sub-title "Registration:"

"23. Any person who feels aggrieved by the action of any board of registry in refusing to register him as a qualified voter, or in erasing or misspelling his name, or that of any other person on the registry, or in registering or failing to erase the name of any fictitious, deceased or disqualified person, may at any time, either before or after the last session of the board of registry, but not later than the Saturday next preceding the election, in the City of Baltimore, and not later than the Tuesday next preceding the election, if in the counties, file a petition, verified by affidavit, in the Circuit Court for the county, or if the cause of complaint arises in Baltimore City, in any court of Baltimore City, setting forth the ground of his application, and asking to have the registry corrected. The court will forthwith set the petition for hearing, and direct summons to be issued requiring the board of registry to attend at the hearing or by counsel; * * * At the hearing, evidence subject only to the ordinary rules of evidence (as modified by the provisions of this section), may be introduced for or against the application, and the judge shall dispose of the matter summarily, by granting or refusing the order prayed, and the clerk of the court shall make a minute of the proceeding. The cost of proceedings in all such appeal cases shall from and after the passage of this act be one-half of those provided for under existing law. If the

board of registry shall have returned the registers to the Supervisors of Elections, a certified copy of any such order granted by the court shall be delivered to said Supervisors, who shall thereupon make the required correction upon the proper registers, and under the head of 'Remarks' note that the same was made under such order of the court. The court may enforce any such order by attachment as in proceedings for contempt. No person admitted to the registry by the order of the court shall be protected by such order if prosecuted for false registration or false voting. In all such cases, the petitioner may be represented by counsel, and in disposing of the petition the court shall have discretion to impose the costs upon the petitioner, the County Commissioners or the Mayor and City Council of Baltimore, or the Board of Registry, or any member or members thereof, as justice and equity may require; but no attorney's appearance fee shall be taxed as part of such costs. In Baltimore City the Supreme Bench shall, from time to time, assign a judge or judges before whom, or any of whom, such petitions shall be heard, and neither party shall have any right of removal. Exceptions may be taken to any ruling of the court at the hearing of any such petition and appeal allowed to the Court of Appeals, as in other cases; all such appeals shall be taken within five days from the date of the decision complained of, and shall be heard and decided by the Court of Appeals as soon after the transmission of the record as may be practicable."